



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MACHAKOS

APPELLATE SIDE

(Coram: Odunga, J)

CIVIL APPEAL NOS. 49, 50 AND 51 OF 2018

BETWEEN

NDETI MULI.....1ST APPELLANT /APPLICANT

ALBERT PHILLIP KATITI.....2ND APPELLANT /APPLICANT

KETER KIPROTICH.....3RD APPELLANT/APPLICANT

VERSUS

**HOGLA MKANDO OMARI AND JOHN KILELU (Both suing as representatives of the
Estate of Francis Mwatembo Mulonza).....RESPONDENTS**

RULING

1. This ruling is in respect of applications made in Civil Appeals No. 49, 50 and 51 of 2018 which have been consolidated at the request of the parties herein. By the said applications, the applicants herein seek stay of execution of the judgement delivered in Machakos CMCC 197 of 2013, 642 of 2012, 198 of 2013 and 199 of 2013. Apparently, in the said judgements the trial court decreed that the applicants herein do pay the applicants the sum of Kshs 1,776,600.00, Kshs 2,014,560.00, Kshs 1,704,600.00 and Kshs 2,024,600.00 respectively totalling Kshs 7,520,360.00.

2. Subsequent to the delivery of the said judgements, the applicants applied before the trial court for stay of execution pending the hearing and determination of these appeals, and in the ruling dated 1st August, 2018, the court ordered the applicants to deposit the said sums in court within 30 days from the date of the said ruling 4 on 28th April, 2018 pending the hearing and determination of these appeals.

3. According to the applicants, their advocates promptly advised the applicants' insurers to facilitate the deposit of the said sums as directed and the said insurers issued insurers instructed their banker to transfer the said sum. However, as the said bankers had issues with their systems, there was a delay in complying with the said order in time. In the submissions it was disclosed that whereas the said sum was to be deposited by 1st November, 2018, a sum of Kshs 5,505,800.00 was deposited in court on 5th November, 2018. As a result, the Respondents moved the court for the releases of a sum totalling Kshs 5,505,800.00. By a ruling delivered on 5th December, 2018 the trial court directed that the said sum be released to the Respondents.

4. According to the applicants they have serious triable issues to be canvassed in these appeals which have high chances of success and unless these applications are granted and the executions proceedings commences, they will suffer irreparable loss and damages and the said appeals will be rendered nugatory yet the applicants are exercising their legal right of appeal.

5. The Respondents in opposing the applications stated that the applicants have not demonstrated any chances of success in their appeals hence to grant the applications will be an abuse of the process of the court as they have enjoyed stay of execution from the time of the judgement on 18th April, 2018. According to the Respondents, the applicants have not met the required conditions for the grant of stay, 11 months down the line. To the Respondents, the applicants' intention is to deprive them of the fruits of their successful litigation and frustrate the Respondents who lost all their children in the accident the subject of these proceedings in 2010.

6. It was averred that the estate of the deceased is endowed with financial instability (sic) and that even if the appeal succeeds, the estate can easily return the decretal judgement hence the appeal cannot be rendered nugatory since the appeal is all about loss of dependency. It was

further averred that apart from the failure by the applicants to comply with the conditions stipulated for stay, the applicants have not offered any security and they never applied for extension of time to comply with the said conditions.

7. The Respondents therefore prayed that the applications be dismissed and that there be an order for release of the funds to the Respondents as litigation must come to an end.

8. On behalf of the applicants it was submitted that since the security has been deposited the Respondents will not suffer any loss if the stay is granted. It was submitted that the applicants had satisfied the conditions prescribed under Order 42 rule 6(2) of the **Civil Procedure Rules** as expounded in various authorities. According to the applicants, the applicants' insurers is obliged to satisfy the decree on behalf of the applicants under the doctrine of subrogation and relies on the payment of premiums to collect the said amount and would hence suffer loss and damage if the stay is not granted and the appeal succeeds since the Respondents is unlikely to refund the said sum of Kshs 5,505,800.00 which in the applicants' view is an astronomical figure. The applicants averred that the Respondents have not sworn an affidavit of means showing that they would be able to refund the said sum if paid to them and the appeal succeeds.

9. As regards the failure by the applicants to seek extension of time, it was submitted that procedural rules are the backbone of justice and should not be used by a party to frustrate the ends of justice.

10. On behalf of the Respondents reiterated the history of the case and the contents of the replying affidavit.

Determination

11. I have considered the application, the affidavits both in support of and in opposition to the application.

12. The principles guiding the grant of a stay of execution pending appeal are well settled. These principles are provided under Order 42 rule 6(2) of the **Civil Procedure Rules** which provides as follows:

No order for stay of execution shall be made under subrule (1) unless—

(a) the court is satisfied that substantial loss may result to the applicant unless the order is made and that the application has been made without unreasonable delay; and

(b) such security as the court orders for the due performance of such decree or order as may ultimately be binding on him has been given by the applicant.

13. This is a case where a stay of execution was granted on conditions by the trial court but the conditions were not complied with within the prescribed period. Order 42 rule 6(1) of the **Civil Procedure Rules** provides as follows:

No appeal or second appeal shall operate as a stay of execution or proceedings under a decree or order appealed from except in so far as the court appealed from may order but, the court appealed from may for sufficient cause order stay of execution of such decree or order, and whether the application for such stay shall have been granted or refused by the court appealed from, the court to which such appeal is preferred shall be at liberty, on application being made, to consider such application and to make such order thereon as may to it seem just, and any person aggrieved by an order of stay made by the court from whose decision the appeal is preferred may apply to the appellate court to have such order set aside.

14. In **Stanley Karanja Wainaina & Another vs. Ridon Anyangu Mutubwa [2016] eKLR**, it was held that:

“Counsel for the Respondent submitted on the provision of Order 42 Rule 6 (1) of the Civil Procedure Rules and argued that the Appellants had been granted a stay of execution by the trial court and in bringing the present application it was an abuse of the court process. In my view, Order 42 Rule 6(1) allows a party to file another application for stay of execution in the High Court whether the application for such stay shall have been granted or refused by the court appealed from. I appreciate the argument by the learned counsel and this court shares the same sentiment in that once an application has been dealt with by a court of competent jurisdiction and between the same parties, a similar application cannot be filed before another court as that would be an abuse of the court process or at best, *res judicata*. Unfortunately, that legal provision is part of our laws and until the same has been amended, we have no choice but to live with it as it is.”

15. Similarly, in **Patrick Kalava Kulamba & Another vs. Philip Kamosu and Roda Ndanu Philip (Suing as the Legal Representative of the Estate of Jackline Ndinda Philip (Deceased) [2016] eKLR** it was held by Meoli, J that:

“12. For the purposes of this case, the operational words are as underlined above. Thus, whether an application for stay pending appeal has been allowed or rejected in the lower court, the High Court “shall be at liberty...to consider” an application for stay made to it and to make any order it deems fit. The High Court in that capacity exercises what can be termed “original jurisdiction”. And from my reading of the rule, the jurisdiction is not dependent on whether or not a similar application had been made in the lower court, or the fate thereof...

[17. So long as an appeal from the substantive decision of the lower court has been lodged, an application under Order 42 Rule 6 (1) of the Civil Procedure Rules can be entertained afresh in the High Court. I believe that was part of the distinction that the Court of Appeal was making in the Githunguri Case concerning the court’s original jurisdiction, vis-à-vis the appellate jurisdiction and the innovation behind Rule 5 (2) b (as it is now). The foregoing has a bearing on the interpretation

of Order 42 Rule 6 (6) of the Civil Procedure Rules and in particular the highlighted phrased therein.

18. Similarly, the jurisdiction of the High Court in this case was invoked when the substantive appeal (itself a fresh pleading separate from the suit in the lower court) was filed. It is true that the application for stay of execution was allowed with conditions in the lower court. The wording in Order 42 Rule 6 (1) however does not preclude the Applicant from approaching this court as it has done.

19. I would venture to add that the wording of Order 42 Rule 6 (1) of the Civil Procedure Rules effectively grants the same jurisdiction to this court as an appellate court as Rule 5 (2) (b) does to the Court of Appeal: to entertain an application for stay whether or not the same has already been heard by the lower court and dismissed. The only salient difference is that in the case of the High Court the rule makes it clear that it matters not whether the earlier application for stay in the lower court has been allowed or rejected in the lower court. That is my reading of Order 42 Rule 6 (1).

20. It suffices, in my opinion, in this case, in view of the nature of the application before me, that there is an existing substantive appeal against the judgment of the lower court. To insist in this case that the Applicant must first file a separate appeal on the ruling of the lower court, apart from the judgment would in my view not only lead to confusing duplication of proceedings in respect of the same matter but also cause delay. . The provisions however must be applied under the guiding principles of Article 15 9 (2) d) of the Constitution.

21. In the circumstances of this case, I consider that driving the Applicant from the seat of justice when there exists a substantive appeal, and in disregard of the full import of Order 42 Rule (6) (1) would amount to raising a technicality, namely, the filing of an appeal on a supplemental matter that actually touches on the appeal where a substantive appeal already exists, above purpose and substance. There may arise in certain cases allegations of abuse of procedure but that must be established.”

16. In arriving at its decision the Court relied on Equity Bank Limited vs. West Link Mbo Limited [2013] eKLR, where it was held by Githinji, JA that:

“[13] It is trite law that in dealing with (Rule 5 (2) (b) applications the court exercise discretion as a court of first instance and even where a similar application has been made in the High Court or other similar court under Rule 6 (1) of Order 42 of the Civil Procedure Rules and refused, the court in dealing with a fresh application still exercises original independent discretion as opposed to appellate jurisdiction (Githunguri –Versus- Jimba Credit Corporation Ltd. (No. 2) [1988] KLR 838.”

17. In his judgment **Musinga, JA** observed on the same question that:

“The court is said to be exercising special independent original jurisdiction because on considering whether to grant or refuse an application for stay, it is not hearing an appeal from the High Court decision. It can grant orders of stay, irrespective of whether or not such an application had been made in the High Court. (See Stanley Munga Githunguri –Vs- Jimba Credit Corporation Ltd (Supra).”

18. **Kiage, JA** in his judgment quoted a passage from the judgment of the Court of Appeal in Gurbux Singh Suiri & Anor. –vs- Royal Credit Ltd. Civil Application NAI 281 of 1995 expounding the court’s reflection in its dictum in the **Githunguri** case as follows:-

“In ordinary circumstances the court has only appellate jurisdiction and in the absence of Rule 5 (2) (b) a party who has been refused a stay of execution or an injunction by the High Court would have been obliged to apply to the Court of Appeal to set aside the refusal and then, having done so, to grant the stay or injunction...But because of the existence of Rule 5 2 (b) one does not have to apply to the court to first set aside the refusal by the High Court and then having set aside the High Court order, to grant one itself. That is clearly the sense in which the expression ‘independent original jurisdiction’ is to be understood and that was made abundantly clear in the Githunguri case, supra, by use of the expressions such as “we have to apply our minds *de novo* or it is not an appeal from the learned Judge’s discretion to ours.”

19. It is therefore clear that under the said provision, whether the application for stay was granted or refused by the trial court, this court is at liberty to consider such application and to make such order thereon as it deems just. Where an order of stay is granted but any person feels aggrieved by such an order of stay he may apply to this court to have the same set aside. In this case however, the applicants are not aggrieved by the conditional stay. Their only problem is that due to factors beyond them, they were unable to comply with the prescribed time. Order 50 rule 6 of the **Civil Procedure Rules** provides that:

Where a limited time has been fixed for doing any act or taking any proceedings under these Rules, or by summary notice or by

order of the court, the court shall have power to enlarge such time upon such terms (if any) as the justice of the case may require, and such enlargement may be ordered although the application for the same is not made until after the expiration of the time appointed or allowed:

Provided that the costs of any application to extend such time and of any order made thereon shall be borne by the parties making such application, unless the court orders otherwise.

20. In this case the time for complying with the conditions imposed on the grant of stay was fixed by the order of the trial court. I therefore

agree with the Respondents that ideally, the applicants ought to have applied for extension of time to comply with the said order. Whereas the failure to do so does not deprive this court of its power to consider the application, the court may in the exercise of its discretion take into account the failure by the applicants to do so.

21. In Vishram Ravji Halai vs. Thornton & Turpin Civil Application No. Nai. 15 of 1990 [1990] KLR 365, the Court of Appeal held that whereas the Court of Appeal's power to grant a stay pending appeal is unfettered, the High Court's jurisdiction to do so under Order 41 rule 6 of the *Civil Procedure Rules* is fettered by three conditions namely, establishment of a sufficient cause, satisfaction of substantial loss and the furnishing of security. Further the application must be made without unreasonable delay. To the foregoing I would add that the stay may only be granted for sufficient cause and that the Court in deciding whether or not to grant the stay and that in light of the overriding objective stipulated in sections 1A and 1B of the *Civil Procedure Act*, the Court is no longer limited to the foregoing provisions. The courts are now enjoined to give effect to the overriding objective in the exercise of its powers under the *Civil Procedure Act* or in the interpretation of any of its provisions. According to section 1A(2) of the *Civil Procedure Act* "the Court shall, in the exercise of its powers under this Act or the interpretation of any of its provisions, seek to give effect to the overriding objective" while under section 1B some of the aims of the said objective are; the just determination of the proceedings; the efficient disposal of the business of the Court; the efficient use of the available judicial and administrative resources; and the timely disposal of the proceedings, and all other proceedings in the Court, at a cost affordable by the respective parties.

22. It therefore follows that all the pre-Overriding Objective decisions must now be looked at in the light of the said provisions. This does not necessarily imply that all precedents are ignored but that the same must be interpreted in a manner that gives effect to the said objective. What is expected of the Court is to ensure that the aims and intendment of the overriding objective as stipulated in section 1A as read with section 1B of the *Civil Procedure Act* are attained. It is therefore important that the Court takes into consideration the likely effect of granting the stay on the proceedings in question. In other words, the Court ought to weigh the likely consequences of granting the stay or not doing so and lean towards a determination which is unlikely to lead to an undesirable or absurd outcome. What the Court ought to do when confronted with such circumstances is to consider the twin overriding principles of proportionality and equality of arms which are aimed at placing the parties before the Court on equal footing and see where the scales of justice lie considering the fact that it is the business of the court, so far as possible, to secure that any transitional motions before the Court do not render nugatory the ultimate end of justice. The Court, in exercising its discretion, should therefore always opt for the lower rather than the higher risk of injustice. See Suleiman vs. Amboseli Resort Limited [2004] 2 KLR 589. This was the position of **Warsame, J** (as he then was) in Samvir Trustee Limited vs. Guardian Bank Limited Nairobi (Milimani) HCCC 795 of 1997 where he expressed himself as hereunder:

"Every party aggrieved with a decision of the High Court has a natural and undoubted right to seek the intervention of the Court of Appeal and the Court should not put unnecessary hindrance to the enjoyment and exercise of that right by the defendant. A stay would be overwhelming hindrance to the exercise of the discretionary powers of the court...The Court in considering whether to grant or refuse an application for stay is empowered to see whether there exist any special circumstances which can sway the discretion of the court in a particular manner. But the yardstick is for the court to balance or weigh the scales of justice by ensuring that an appeal is not rendered nugatory while at the same time ensuring that a successful party is not impeded from the enjoyment of the fruits of his judgement. It is a fundamental factor to bear in mind that, a successful party is *prima facie* entitled to the fruits of his judgement; hence the consequence of a judgement is that it has defined the rights of a party with definitive conclusion. The respondent is asserting that matured right against the applicant/defendant...For the applicant to obtain a stay of execution, it must satisfy the court that substantial loss would result if no stay is granted. It is not enough to merely put forward mere assertions of substantial loss, there must be empirical or documentary evidence to support such contention. It means the court will not consider assertions of substantial loss on the face value but the court in exercising its discretion would be guided by adequate and proper evidence of substantial loss... Whereas there is no doubt that the defendant is a bank, allegedly with substantial assets, the court is entitled to weigh the present and future circumstances which can destroy the substratum of the litigation...At the stage of the application for stay of execution pending appeal the court must ensure that parties fight it out on a level playing ground and on equal footing in an attempt to safeguard the rights and interests of both sides. The overriding objective of the court is to ensure the execution of one party's right should not defeat or derogate the right of the other. The Court is therefore empowered to carry out a balancing exercise to ensure justice and fairness thrive within the corridors of the court. Justice requires the court to give an order of stay with certain conditions."

23. On the first principle, **Platt, Ag.JA** (as he then was) in Kenya Shell Limited vs. Kibiru [1986] KLR 410, at page 416 expressed himself as follows:

"It is usually a good rule to see if Order XLI Rule 4 of the Civil Procedure Rules can be substantiated. If there is no evidence of substantial loss to the applicant, it would be a rare case when an appeal would be rendered nugatory by some other event. Substantial loss in its various forms, is the corner stone of both jurisdictions for granting a stay. That is what has to be prevented. Therefore without this evidence it is difficult to see why the respondents should be kept out of their money".

24. On the part of **Gachuhi, Ag.JA** (as he then was) at 417 held:

"It is not sufficient by merely stating that the sum of Shs 20,380.00 is a lot of money and the applicant would suffer loss if the money is paid. What sort of loss would this be? In an application of this nature, the applicant should show the damages it would suffer if the order for stay is not granted. By granting a stay would mean that status quo should remain as it were before judgement. What assurance can there be of appeal succeeding? On the other hand, granting the stay would be denying a successful litigant of the fruits of his judgement."

25. Dealing with the contention that there was no evidence that the 1st Respondent would be able to refund the decretal sum if paid over to the Respondent, **Hancox, JA** (as he then was) in the above cited case when he expressed himself as follows:

"I therefore think in the circumstances that these comments were unfortunate. Nevertheless, having considered the matter to

the full, and with anxious care, there is in my judgement no justification whatsoever for holding that there is a likelihood that the respondents will not repay the decretal sum if the appeal is successful and that the appeal will thereby be rendered nugatory. The first respondent is a man of substance, with a good position and prospects. It is true his house was, in his words, reduced to ashes, but I do not take that against him. Both seem to me to be respectable people and there is no evidence that either will cease to be so, in particular that the first respondent will not remain in his job until pensionable age.”

26. Therefore, the mere fact that the decree holder is not a man of means does not necessarily justify him be barred from benefiting from the fruits of his judgement. On the other hand, the general rule is that the Court ought not to deny a successful litigant of the fruits of his judgement save in exceptional circumstances where to decline to do so may well amount to stifling the right of the unsuccessful party to challenge the decision in the higher Court. In **Machira T/A Machira & Co Advocates vs. East African Standard (No 2) [2002] KLR 63** it was held that:

“to be obsessed with the protection of an appellant or intending appellant in total disregard or flitting mention of the so far successful opposite party is to flirt with one party as crocodile tears are shed for the other, contrary to sound principle for the exercise of a judicial discretion. The ordinary principle is that a successful party is entitled to the fruits of his judgement or of any decision of the court giving him success at any stage. That is trite knowledge and is one of the fundamental procedural values which is acknowledged and normally must be put into effect by the way applications for stay of further proceedings or execution, pending appeal are handled. In the application of that ordinary principle, the court must have its sight firmly fixed on upholding the overriding objective of the rules of procedure for handling civil cases in courts, which is to do justice in accordance with the law and to prevent abuse of the process of the court”.

27. Where the allegation is that the respondent will not be able to refund the decretal sum if any sums are paid to him in satisfaction of the decree, the burden is upon the applicant to prove that that is the position. See **Caneland Ltd. & 2 Others vs. Delphis Bank Ltd. Civil Application No. Nai. 344 of 1999.**

28. The law, however appreciates that it may not be possible for the applicant to know the respondent’s financial means. The law is therefore that all an applicant can reasonably be expected to do, is to swear, *upon reasonable grounds*, that the Respondent will not be in a position to refund the decretal sum if it is paid over to him and the pending appeal was to succeed but is not expected to go into the bank accounts, if any, operated by the Respondent to see if there is any money there. The property a man has is a matter so peculiarly within his knowledge that an applicant may not reasonably be expected to know them. In those circumstances, the legal burden still remains on the applicant, but the evidential burden would then, in those circumstances, where the applicant has reasonable grounds which grounds must be disclosed in the application that the Respondent will not be in a position to refund the decretal sum if the appeal succeeds, have shifted to the Respondent to show that he would be in a position to refund the decretal sum. See **Kenya Posts & Telecommunications Corporation vs. Paul Gachanga Ndarua Civil Application No. Nai. 367 of 2001; ABN Amro Bank, N.K. vs. Le Monde Foods Limited Civil Application No. 15 of 2002.**

29. What amounts to reasonable grounds for believing that the respondent will not be able to refund the decretal sum is a matter of fact which depends on the facts of a particular case. In my view even if it were shown that the respondent is a man of lesser means, that would not necessarily justify a stay of execution as poverty is not a ground for denial of a person’s right to enjoy the fruits of his success. Suffice to say as was held in **Stephen Wanjohi vs. Central Glass Industries Ltd. Nairobi HCCC No. 6726 of 1991**, financial ability of a decree holder solely is not a reason for allowing stay; it is enough that the decree holder is not a dishonourable miscreant without any form of income.

30. In this case, the applicants have not disclosed their grounds for believing that the Respondents would not be able to refund the decretal sum herein. They have not disclosed their source of information that the Respondents will be unable to refund the decretal sum if paid over to them. In my view it is not sufficient to simply make a bare averment that the Respondents will not be able to refund the decretal sum if paid over to them. As far as the Court is concerned the Respondents are the successful parties and have a right to enjoy the fruits of their judgement unless the circumstances dictate otherwise. It is upon the applicants who seek to deprive the applicants, the successful parties, from enjoying his fruits of their judgement, to prove that those circumstances do exist. That threshold cannot be said to have been attained by mere bare allegations devoid of sources of information or grounds of belief.

31. In this case however, the decree sum is over Kshs 5 million. While the general rule is that poverty of the judgement creditor is not necessarily a ground for granting stay of execution, where the award is on the face of it high, that is a factor which this Court may take into account.

32. Therefore, with respect to the issue whether or not the applicant stands to suffer substantial loss in **Job Kilach vs. Nation Media Group & 2 Others Civil Application No. Nai. 168 of 2005** the Court of Appeal citing **Oraro & Rachier Advocates vs. Co-operative Bank of Kenya Limited Civil Application No. Nai. 358 of 1999** held that where there is a decree against the applicant but the amount is colossal, it cannot be lost sight of the fact that the decretal sum is a very large sum, which by Kenyan standards very few individuals will be in a position to pay without being overly destabilized. In the said case the amount in question was Kshs. 4,000,000.00. In this case, I take judicial notice of the fact that the Respondents, the decree holders herein, are representatives of the estates of the deceased persons. Clearly therefore in the event that the Applicants succeed in the appeal, recovery of the sum paid may be difficult particularly as the Respondents have not disclosed the estates’ source of income. Therefore, if the applicant were to prove that if compelled to settle the decretal sum it may well fold up hence be disabled in pursuing his otherwise merited appeal, the Court may, while also taking into account the prospects of the Respondent being able to be paid if the appeal were to fail, grant the stay sought.

33. However, the applicants’ appeal intends to challenge only the quantum of damages as opposed to liability, a realisation that at the end of the day some amount is likely to be awarded to the Respondents.

34. In the premises, there will be a stay of execution pending this appeal on condition that the Applicants remit to the Respondent half of the decretal sum and deposits the other half in a joint interest earning account in Kenya Commercial Bank, Machakos, in the names of the advocates for the parties herein within 30 days from the date hereof. In default of compliance, this application will be deemed to have been

dismissed with costs.

35. As regards costs, although this Court directed the parties to furnish it with soft copies of the pleadings and submissions in word format, the Respondents only deemed it fit to forward submissions while the Applicants did not bother to comply at all. Section 1A(3) of the **Civil Procedure Act** provides as hereunder:

A party to civil proceedings or an advocate for such a party is under a duty to assist the Court to further the overriding objective of the Act and, to that effect, to participate in the processes of the Court and to comply with the directions and orders of the Court.

36. One of the overriding objectives of the **Civil Procedure Act** is the facilitation of expeditious resolution of the civil disputes governed by the Act. The direction that Advocates and parties do furnish the Court with soft copies of their pleadings and submissions is geared towards that same objective and where they fail to comply therewith, it amounts to a failure to comply with a statutory mandate which may call for a penalty in costs or deprivation of costs even where the same would have been granted. In fact, in such circumstances, the court may well invoke its powers under section 56 of the **Advocates Act** and penalise advocates in costs personally. Accordingly, the costs of these applications are awarded to the Respondents.

37. For avoidance of doubt this ruling applies to similar applications in High Court Civil Appeal Nos. 49, 50 and 51 of 2018.

38. It is so ordered. c

Read, signed and delivered in open Court at Machakos this 27th day of May, 2019.

G V ODUNGA

JUDGE

Delivered in the presence of:

Ms Odembo for the Respondents

Mr Muli for Mr Abuga for the Applicants

CA Geoffrey